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1068, 1069, 4153-4157, 4166; Dec. Dig. § 1050.\* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

**9. Sales (§ 446\*)—Actions—Breach of Warranty—Evidence—Instructions.**—In an action for the price of machinery wherein the buyer pleaded the general issue and special pleas of set-off, setting up a breach of warranty, misrepresentations, and failure of consideration, instructions held to fairly and fully submit the issues.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1309-1317; Dec. Dig. § 446.\* 13 Va.-W. Va. Enc. Dig. 664; 14 Va.-W. Va. Enc. Dig. 1069; 15 Va.-W. Va. Enc. Dig. 1062.]

**10. Trial (§ 260\*)—Instructions—Refusal of Requested Instructions.**—Where the court fairly and fully submitted the issues to the jury, it was not error to refuse requested instructions.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 651-659; Dec. Dig. § 260.\* 7 Va.-W. Va. Enc. Dig. 742; 14 Va.-W. Va. Enc. Dig. 565; 15 Va.-W. Va. Enc. Dig. 521.]

**11. Trial (§ 295\*)—Instructions—Construction.**—The instructions must be read as a whole, and, if when so read they did not mislead the jury, the verdict will not be disturbed, though one or more of them may be defective.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 703-717; Dec. Dig. § 295.\* 7 Va.-W. Va. Enc. Dig. 743; 14 Va.-W. Va. Enc. Dig. 566; 15 Va.-W. Va. Enc. Dig. 521.]

**12. Sales (§ 441\*)—Actions for Price—Breach of Warranty—Evidence.**—In an action for the price of machinery warranted to work satisfactorily, evidence held to justify a finding of breach of warranty.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1277-1283; Dec. Dig. § 441.\* 13 Va.-W. Va. Enc. Dig. 663; 14 Va.-W. Va. Enc. Dig. 1069; 15 Va.-W. Va. Enc. Dig. 1063.]

Error to Circuit Court, Augusta County.

Action by Isaac Ney and another against M. F. Wrenn and others. There was a judgment for defendants, and plaintiffs bring error. Affirmed.

*Rudolph Bumgardner*, of Staunton, and *D. O. Dechert*, of Harrisonburg, for plaintiffs in error.

*Timberlake & Nelson*, of Staunton, for defendants in error.

#### LOW MOOR IRON CO. OF VIRGINIA *v.* JACKSON.

Jan. 12, 1915.

[84 S. E. 100.]

**1. Frauds, Statute of (§ 56\*)—Real Property—Brokers—Contract for Sale.**—Where the authority given to a broker to effect a sale of

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

real property does not require the contract of sale to be in writing, the agreement to pay him a commission to find a purchaser is not within the statute of frauds, and is valid, though not in writing.

[Ed. Note.—For other cases, see *Frauds*, Statute of, Cent. Dig. §§ 63-89, 133-138; Dec. Dig. § 56.\* 6 Va.-W. Va. Enc. Dig. 522; 14 Va.-W. Va. Enc. Dig. 482; 15 Va.-W. Va. Enc. Dig. 430.]

**2. Brokers (§ 84\*)—Action for Commission—Burden of Proof.**—The burden of showing that the purchaser is able, ready, and willing to purchase rests ordinarily on the broker in his action for commission for negotiating a sale.

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 104, 105; Dec. Dig. § 84.\* 2 Va.-W. Va. Enc. Dig. 638; 14 Va.-W. Va. Enc. Dig. 177; 15 Va.-W. Va. Enc. Dig. 145.]

**3. Brokers (§§ 54, 63\*)—Right to Compensation—Sufficiency of Services—"Produce."**—A broker is entitled to a commission when he produces to his principal a customer ready, willing, and able to purchase upon the terms fixed by the principal and the sale was prevented by the wrongful refusal of the principal to close it on his part; the word "produce" not requiring that the purchaser be brought face to face with the seller, if there be other satisfactory evidence of his existence and his readiness and ability to purchase:

[Ed. Note.—For other cases, see *Brokers*, Cent. Dig. §§ 75-81, 94-96; Dec. Dig. §§ 54, 63.\* 2 Va.-W. Va. Enc. Dig. 638; 14 Va.-W. Va. Enc. Dig. 177; 15 Va.-W. Va. Enc. Dig. 145.]

For other definitions, see *Words and Phrases*, First and Second Series, *Produce*.]

**4. Trial (§ 260\*)—Brokers—Action for Compensation—Instructions Already Given.**—In a broker's action for a commission, where the court instructed that if he had never offered on behalf of the purchaser more than an amount which the principal declined to accept he was not entitled to a commission, and that the burden was upon him to show by a preponderance of the evidence that he offered the principal's price on behalf of the purchaser who was ready, able, and willing to perform, the refusal of defendant's requested instruction that he could not recover unless he showed by a preponderance of the evidence that he was the purchaser's authorized agent to buy at the principal's price, that defendant within the time allowed accepted the purchaser's offer, that the purchaser made no other proposition, and that the purchaser was always ready and willing to perform, was not reversible error.

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. §§ 651-659; Dec. Dig. § 260.\* 7 Va.-W. Va. Enc. Dig. 742; 14 Va.-W. Va. Enc. Dig. 565; 15 Va.-W. Va. Enc. Dig. 521.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**5. Trial (§ 206\*)—Province of Court and Jury—Instruction—Weight of Evidence.**—Juries are the judges of the credibility of witnesses, but they do not exercise an arbitrary discretion, and it is the court's duty, while not intimating its opinion upon facts, to instruct the jury on request or on its own motion, to enable them intelligently to consider and weigh contradictory and irreconcilable evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 500; Dec. Dig. § 206.\* 5 Va.-W. Va. Enc. Dig. 351; 14 Va.-W. Va. Enc. Dig. 415; 15 Va.-W. Va. Enc. Dig. 359.]

**6. Evidence (§ 588\*)—Weight of Evidence—Credibility of Witness.**—The jury, in weighing contradictory and irreconcilable evidence, may consider the accuracy of each witness' recollection, the reasonableness and consistency of each part of his evidence with the rest of it, his interest in the controversy, and his demeanor while testifying.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2437; Dec. Dig. § 588.\* 5 Va.-W. Va. Enc. Dig. 354; 14 Va.-W. Va. Enc. Dig. 415; 15 Va.-W. Va. Enc. Dig. 359.]

Appeal from Circuit Court, Alleghany County.

Action by P. A. Jackson against the Low Moor Iron Company of Virginia. Judgment for plaintiff, and defendant brings error. affirmed.

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DISTRICT ROAD BOARD OF CENTER MAGISTERIAL DIST.  
OF FAUQUIER COUNTY *v.* SPILMAN.

Jan. 15, 1915.

[84 S. E. 103.]

**1. Statutes (§ 123\*)—Title—Road Board.**—The titles of Acts 1910, c. 106, and Acts 1914, c. 107, which state that they are acts to amend a certain act entitled an act creating a road board for a certain county, and providing for the working of the roads therein, are sufficient to cover the provisions of those acts creating district road boards and authorizing the collection of tolls on macadam roads.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 176-183; Dec. Dig. § 123.\* 12 Va.-W. Va. Enc. Dig. 777; 14 Va.-W. Va. Enc. Dig. 954.]

**2. Statutes (§ 109\*)—Title of Act—Amending Act.**—Where the title of the original act is sufficient to cover the provisions of an amendment, the constitutional requirement is satisfied and the title of the amending act is immaterial.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 136-139;

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.